IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 312 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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TAJBIBI IBRAHIMBHAI - Appellant(s)
Versus
DALSUKHBHAI BIJIABHAI & 4 - Defendant(s)

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Appearance :
MR JC SHETH for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
NOTICE SERVED for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgment and award dated 31.01.83 passed by the Motor Accident Claim Tribunal, Bharuch in MACP No. 444 of 1981 whereby the Tribunal awarded compensation to the tune of Rs. 32,000/- to the original claimants.

2. The present respondent no.1, 2 and 3, being the parents and younger brother respectively of the deceased Govalbhai filed an application claiming for compensation to the tune of Rs. 33,000/- in respect of the accident which occurred when the deceased alongwith other workers was employed for loading and unloading pieces of metals

in the truck bearing no. GTK 3472. At that time, the original opponent no.1 was driving the truck out of the quarry in a rash and negligent manner as a result of which it turtled and thereby injured the deceased and other workers. The deceased after receiving injuries on his head, chest, abdomen and other parts of the body died within a period of 5 to 10 minutes of the occurrence of the accident. The Tribunal after hearing the parties passed the aforesaid award.

3. This matter was earlier listed on 05.07.2006 and the following order was passed:

> "Mr J.C Sheth, learned advocate for the appellants is not present even in the third call. As a last chance matter to come up on 18/07/2006."

However, even today none appears for the appellants. In that view of the matter, the matter is proceeded exparte.

4. I have gone through the award of the Tribunal. The Tribunal has relied on the complaint lodged against the driver of the truck by the Jhagadia Police Station at Ex. 28 and the panchnama at Ex. 29 whereby it is clear that the incident had taken place on account of the rash and negligent driving of the truck bearing no. GTK 3471 driven by original opponent no.1 in the course of

employment with present appellant.

4.1 Moreover, I am of the opinion that before the insurance company can be made liable to answer the claim of damages arising out of the accidental injuries caused to a third party on account of the use of the insured vehicle it must be shown that the vehicle was driven in a rash and negligent manner in a public place or the root cause of the accident must have originated during the time when the vehicle was used in a public place. In the present case, the accident has taken place in a private place, which is the quarry of metals belonging to one Abdul Khatri, where the members of public have no right to go. In that view of the matter, the Tribunal has rightly exonerated the insurance company from the said liability. I am in complete agreement with the reasonings adopted and findings arrived at by the Tribunal and therefore no interference is called for in the matter.

5. In the premises aforesaid, appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

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